



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**Criminal Case 77 of 2003**

**REPUBLIC ..... PROSECUTOR**  
**VERSUS**

**MUTABARI MITHIKA KOOME ..... ACCUSED**

**RULING**

The accused in this matter raised a preliminary objection based on section 72 (3) (b) of the Constitution. He alleged that he was arrested on 8<sup>th</sup> April 2003 and that he was detained in custody until 20<sup>th</sup> August 2003. He argued that he was detained beyond the 14 days that are provided for one to be kept in custody in case of capital offence under Section 72 (3) (b). It is indeed unfortunate that the investigating officer, although well informed by the learned state counsel that the objection was to be heard failed to attend court. The burden of proving that a person has been taken to court within the specified period in Section 72 (3) (b) lies upon the person alleging that the one in custody was brought to court as soon as was reasonably practicable. I say it is unfortunate because as I perused the court file, I found that on 20<sup>th</sup> August 2003 the accused was brought before Justice Kasanga Mulwa when plea was taken. What the Judge wrote thereafter is very telling. The Judge wrote:-

***“Case to be withdrawn from magistrate’s court.”***

From that, it does seem that the accused more than likely had been taken before the magistrate’s court for committal proceedings. That was the law then before it was changed. That being so, the accused cannot say that he was first produced before court on 20<sup>th</sup> August 2003. It is obvious that he had been presented before the magistrate’s court way before 20<sup>th</sup> August 2003. I therefore find that I cannot make a determination whether or not the accused person’s constitutional rights were violated without being addressed on the other matter, that is, the committal matter before the magistrate’s court. For that reason, at the reading of this ruling, I will give a date when the state will address the court on the committal proceedings that the appellant went through.

Dated and delivered at Meru this 26<sup>th</sup> day of July 2010.

**MARY KASANGO**  
**JUDGE**